

1 **Frank Bloksberg, SBN 150809**
2 **142 East McKnight Way**
3 **Grass Valley, CA 95949**
4 **Tel: (530) 478-0170**
5 **email: frank@bloksberglaw.com**

6 **Attorney for Kevin Thompson and Mia Nash**

7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 In re:

11 PG&E CORPORATION,

12 -and-

13 PACIFIC GAS & ELECTRIC COMPANY

14 Debtors.

- 15 ☐ Affects PG&E Corporation
16 ☐ Affects Pacific Gas & Electric Company
17 ☒ Affects both Debtors

18 * All papers shall be filed in the Lead Case,
19 No. 19-30088 (DM).

CASE NO: 19-30088-DM

Chapter 11

MOTION FOR RELIEF FROM THE
AUTOMATIC STAY KEVIN THOMPSON
AND MIA NASH

Date: April 9, 2019

Time: 9:30 am

Place: 450 Golden Gate Avenue, 16th Floor
San Francisco, California

Judge: Honorable Dennis Montali

20 TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 Kevin Thompson and Mia Nash hereby move this Court for relief from the automatic stay
22 pursuant to 11 U.S.C. § 362(d)(1) (the "Motion"), to allow their California State Court action,
23 KEVIN THOMPSON and MIA NASH v. PG&E CORPORATION, Case No. CU19-083433, in
24 California Superior Court in Nevada County (the "State Court Action"). (A true copy of the
25 Complaint in the State Court Action (the "Complaint") is attached to the Declaration of Kevin
26 Thompson as Exhibit 1.)
27

1 The State Court Action is an action for declaratory relief in which Mr. Thompson and Ms. Nash
2 do not seek damages.

3 This Motion is based on the accompanying Declaration of Kevin Thompson (the “Declaration”)
4 and Request for Judicial Notice, the points and authorities set forth below, and on such other and
5 further evidence and matters that the Court may consider at the hearing of the Motion.

6
7 **I. Introduction and Summary of the Facts.**

8 This a non-core dispute about whether an easement exists and, if so, the extent of that easement.
9 Even more to the point, this a non-core dispute about whether Debtors can block Mr. Thompson and
10 Ms. Nash from building on their property.

11 Mr. Thompson and Ms. Nash (husband and wife) (Declaration ¶1) are the fee simple owners of a
12 lot located at 10186 Pittsburg Road, Nevada City, CA 95959 (“the Property”). The Property is zoned
13 for single family residences. Mr. Thompson and Ms. Nash want to build a house there. (*Id.*, at ¶3.)

14 PG&E Corporation and Pacific Gas & Electric Company (both referred to as “PG&E”) insists
15 that they have a 50 foot wide easement crossing the Property. (*Id.*, at ¶4.)

16 PG&E asserts that Mr. Thompson and Ms. Nash may not build in this purported easement. As a
17 result, PG&E is asserting exclusive control over the purported easement space. (*Id.*, at ¶5.)

18 If Mr. Thompson and Ms. Nash cannot build in that space, then they cannot build on the Property
19 at all. As a result, PG&E would have exclusive use of the Property. The Property would be useless
20 and without value for its owners. (*Id.*, at ¶¶ 6-7.)

21 Mr. Thompson and Ms. Nash filed the State Court Action on January 28, 2019. (Exhibit 1.)
22 PG&E filed its bankruptcy action the next day, January 29, 2019. Mr. Thompson and Ms. Nash are
23 seeking declaratory relief that no easement exists or, in the alternative, the easement is not as
24 extensive as PG&E asserts. (*Id.*)

25 In April, 2017, Defendant PG&E first asserted to Mr. Thompson and Ms. Nash that it had a 40
26 foot wide easement on the property. PG&E claimed that the easement arose out of a document from

1 1914 (the “1914 document”). (Declaration at ¶8.)

2 In November, 2018, PG&E informed Mr. Thompson and Ms. Nash that it had changed its mind.
3 PG&E told them that the 1914 document did not apply. Rather, PG&E informed Mr. Thompson and
4 Ms. Nash that it has a 50 foot wide easement, arising out of a document from 1909 (the “1909
5 document”). (A true copy of the 1909 document is attached as Exhibit A to the State Court
6 Complaint.) (Id., at ¶9.)

7 PG&E’s assertions are utterly without factual or legal basis. The 1909 document was not
8 recorded, notarized or even signed by all of the purported grantors. It is likely invalid. The 1909
9 document states that for a payment of five dollars in gold, PG&E would obtain an easement for
10 placing poles and a single electric line. The 1909 document states that Defendant PG&E would be
11 allowed to maintain brush 25 feet on each side of the electric line. The 1909 document does not state
12 that Defendant PG&E would have an exclusive 50 foot wide easement on the property. The 1909
13 document says nothing about exclusivity at all.

14 If Mr. Thompson and Ms. Nash cannot get a judicial determination that they can build on their
15 property, then the Property is useless to them. They would be the owners of the property in name
16 only, with all of the legal responsibilities of property owners and none of the benefits. (*Id.*, at ¶7.)
17

18 **II. The State Court Action is a Non-Core Matter.**

19 The State Court action solely concerns the parties’ rights related to a purported easement. The
20 questions about the purported easement are 100% questions of California state law and unrelated in
21 any manner to bankruptcy law. Additionally, Mr. Thompson and Ms. Nash have not attempted to
22 assert against PG&E any sort of affirmative claim for relief challenging any aspect of PG&E’s
23 performance of its statutory duties as a debtor in possession or otherwise implicating core
24 bankruptcy claims procedures. (Complaint.)

25 The purported easement is not even an asset of the bankruptcy estate. The most PG&E has is a
26 contingent asset. PG&E has done nothing to transform this mere contingency into a real asset.

1 PG&E claims that it has an extensive easement arising from its fatally defective 1909 document.
2 If that argument fails, PG&E would likely make a prescriptive easement argument. No deed between
3 the parties exists. No court order exists creating an easement. No debt exists between the parties,
4 within the meaning of the bankruptcy code, and Mr. Thompson and Ms. Nash do not seek any
5 damages from PG&E. (*Id.*, at ¶9.)
6

7 **III. Legal Standards for Relief from Stay.**

8 A party may move for relief from automatic stay under 11 U.S.C. § 362, which provides that a
9 bankruptcy court shall grant relief from the stay upon a showing of cause. (11 U.S.C. § 362(d)(1).)
10 The court determines cause on a case-by-case basis. (*Christensen v. Tucson Estates, Inc. (In re*
11 *Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990) (citation omitted).)
12

13 **A. Cause for Lifting the Stay Exists, Because Mandatory Abstention Would Apply.**

14 “Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court
15 trial involving the same issues, cause may exist for lifting the stay as to the state court trial.” (*In re*
16 *Tucson Estates, Inc.*, 912 F.2d at 1166.)

17 The elements of mandatory abstention are: (1) A timely motion; (2) a purely state law question;
18 (3) a non-core proceeding § 157(c)(1); (4) a lack of independent federal jurisdiction absent the
19 petition under title 11; (5) that an action is commenced in a state court; (6) the state court action may
20 be timely adjudicated; (7) a state forum of appropriate jurisdiction exists. (*Certain Underwriters at*
21 *Lloyds, Syndicates 2623/623 v. GACN, Inc. (In re GACN, Inc.)* (Bankr.9th Cir. 2016) 555 B.R. 684,
22 694.)

23 The State Court Action meets all of the elements of mandatory abstention: PG&E filed
24 bankruptcy very recently, so an abstention motion would be timely. The State Court Action involves
25 purely state law questions. As discussed above, the State Court Action involves non-core matters. No
26 federal jurisdiction would apply to the State Court Action, but for the chapter 11.
27

1 The State Court action was filed before the chapter 13. The State Court Action involves only
2 easement issues, the facts are largely undisputed, and the action will likely be resolved through a
3 dispositive motion. Moreover, Mr. Thompson and Ms. Nash are very motivated to have the matter
4 resolved so that they can use the Property. (Declaration ¶11.) No reasonable chance exists that this
5 very complex chapter 11 matter will be resolved before the State Court action. The forum in which
6 the State Court Action is filed is correct. The Property is located in Nevada County, where the State
7 Court Action is venued. (*Id.*, at ¶13.)

8 Since mandatory abstention would apply, the Court should grant relief from the stay.
9

10 **B. The *Curtis* Factors Support Relief From the Stay.**

11 In determining whether cause exists to permit an action to proceed in a non-bankruptcy forum,
12 courts often analyze the twelve factors set forth in *In re Curtis*. (*In re Curtis*, 40 B.R. 795 (Bankr. D.
13 Utah 1984).) The *Curtis* factors are:

- 14 1. Whether the relief will result in a partial or complete resolution of the issues;
- 15 2. The lack of any connection with or interference with the bankruptcy case;
- 16 3. Whether the foreign proceeding involves the debtor as a fiduciary;
- 17 4. Whether a specialized tribunal has been established to hear the particular cause of action and
18 whether that tribunal has the expertise to hear such cases;
- 19 5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending
20 the litigation;
- 21 6. Whether the action essentially involves third parties, and the debtor functions only as a bailee
22 or conduit for the goods or proceeds in question;
- 23 7. Whether the litigation in another forum would prejudice the interests of other creditors, the
24 creditor's committee and other interested parties;
- 25 8. Whether the judgment claim arising from the foreign action is subject to equitable
26 subordination;

1 9. Whether movant’s success in the foreign proceeding would result in a judicial lien avoidable
2 by the debtor under Section 522(f);

3 10. The interests of judicial economy and the expeditious and economical determination of
4 litigation for the parties;

5 11. Whether the foreign proceedings have progressed to the point where the parties are prepared
6 for trial; and,

7 12. The impact of the stay and the balance of hurt. (*Curtis*, 40 B.R. at 799 800 (internal citations
8 omitted); see also *In re Roger*, 539 B.R. 837, 844-45 (C.D. Cal. 2015); *In re Howrey*, 492 B.R. 19,
9 24 (Bankr. N.D. Cal. 2013); *Truebro, Inc. v. Plumberex Specialties Products, Inc. (In re Plumberex*
10 *Specialties Products, Inc.)*, 311 B.R. 551,559 (Bankr. C.D. Cal. 2004).)

11 The Ninth Circuit has recognized that “the *Curtis* factors are appropriate, nonexclusive, factors to
12 consider in deciding whether to grant relief from the automatic stay to allow pending litigation to
13 continue in another forum.” (*In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. BAP 2009).) While the
14 *Curtis* factors are widely used to determine the existence of cause, not all of the factors are relevant
15 in every case, nor is a court required to give each factor equal weight. (*Plumberex*, 311 B.R. at 560.)

16 “The most important factor in determining whether to grant relief from the automatic stay to
17 permit litigation against the debtor in another forum is the effect of such litigation on the
18 administration of the estate.” (*Roger*, 539 B.R. at 846, citing *Curtis*, 40 B.R. at 806.)

19
20 **C. All of the Applicable *Curtis* Factors Support Relief From the Stay.**

21 Factors 3, 5, 6, 8, and 9 are inapplicable to this matter.
22

23 **Factor 1: Whether the relief will result in a partial or complete resolution of the issues**

24 In the context of this bankruptcy case, the easement PG&E claims is a contingent asset that is
25 disputed by Mr. Thompson and Ms. Nash. As of this writing, and to our knowledge, PG&E has not
26 listed its assertions in this matter as an asset in the bankruptcy case. The State Court Action will
27

1 completely resolve the easement issues.

2 This factor favors relief from stay.

3
4 **Factor 2: The lack of any connection with or interference with the bankruptcy case**

5 As noted above, interference with the bankruptcy case is the most important factor. (*Roger*, 539
6 B.R. at 846.) Here, resolution of the State Court Action will not interfere with the bankruptcy case.
7 The State Court Action did not cause this bankruptcy and is an utterly insignificant matter in the
8 bankruptcy case. (See *In re Pac. Gas & Elec. Co.*, 279 B.R. 561 571 (Bankr. N.D. Cal. 2002);
9 (analyzing abstention factors).)

10 In the context of this bankruptcy case, the easement PG&E claims is a contingent asset that is
11 disputed by Mr. Thompson and Ms. Nash.

12 PG&E will need to commit resources to resolve this dispute at some point. The resources PG&E
13 will need to commit are *de minimis* in relation to this bankruptcy. Since the facts of the State Court
14 matter are largely undisputed, chances are that it will be resolved by a dispositive motion. Other than
15 the relatively small expense of concluding the litigation, there is no interference with the chapter 11
16 case.

17 The litigation expense itself is “irrelevant to this *Curtis* factor” and has been repeatedly held to
18 be legally impermissible as a basis for denying stay relief. (*Roger*, 539 B.R. at 847-848, citing and
19 quoting *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564,
20 566-67 (9th Cir. BAP 1995).) In *Roger*, the district court reversed a bankruptcy court decision
21 denying relief from stay on, among other grounds, “the lack of any evidence regarding the costs of
22 litigating the State Court Action versus the Roger Bankruptcy . . .” (*Roger*, 539 B.R. at 851.)

23 Equally impermissible as a factor is any consideration of whether PG&E might hope in vain to
24 obtain a more favorable outcome in bankruptcy court. As observed by the district court in *Roger*, to
25 the extent the Bankruptcy Court’s decision rested on such an assumption, the Bankruptcy Court
26 committed legal error. (*Roger*, 539 B.R. at 848, n. 5. Also see *Tucson Estates*, 912 F.2d at 1167; “An
27

1 underlying assumption made by the bankruptcy court was that its decision on this issue and the
2 misappropriation damages claim might be different from the state court's. Yet state law governs both
3 issues, so both courts should reach the same result.")

4 This factor supports granting relief from the stay.
5

6 **Factor 4: Whether a specialized tribunal has been established to hear the particular cause**
7 **of action and whether that tribunal has the expertise to hear such cases**

8 Although the State Court is not a specialized tribunal in any strict sense, that Court has direct and
9 detailed knowledge of real property issues in Nevada County and the application of California law to
10 those issues.

11 This factor leans toward granting relief from the stay.
12

13 **Factor 7: Whether the litigation in another forum would prejudice the interests of other**
14 **creditors, the creditor's committee and other interested parties**

15 The State Court Action is a two-party dispute between a married couple, who own a piece of
16 property, and PG&E. Resolving the dispute in their favor will result in Mr. Thompson and Ms. Nash
17 being able to build on their property. The worst possible resolution for PG&E would be that the State
18 Court would order it to move a single pole line a short distance to an easement it actually holds.
19 Nothing in this matter would affect anyone else.

20 This factor favors relief from stay.
21

22 **Factor 10: The interests of judicial economy and the expeditious and economical**
23 **determination of litigation for the parties**

24 Judicial economy would be well served by granting relief from stay. The State Court Action
25 involves issues of state law, not bankruptcy issues. The bankruptcy docket is already addressing
26 myriad bankruptcy issues resulting from the largest utility in California commencing a chapter 11
27

1 case; no reason exists to add to this Court's burden with this tangential matter.

2 Litigating this matter in Nevada County, where Mr. Thompson, Ms. Nash, and the Property all
3 are is economical and appropriate rather than far-off San Francisco. Indeed, under California law,
4 Nevada County is the only proper venue for the action.

5 No prejudice to the bankruptcy estate would occur from this Court lifting the stay.

6 This factor favors relief from stay.
7

8 **Factor 11: Whether the foreign proceedings have progressed to the point where the parties**
9 **are prepared for trial**

10 The State Court Action is newly filed. PG&E has not appeared and no litigation has taken place.
11 That being said, the parties were seriously involved in settlement discussions when PG&E filed this
12 chapter 11 case. That filing brought the settlement discussions to an abrupt halt. With relief from the
13 stay, the parties could promptly renew discussions and, hopefully, resolve this dispute. Or, given tha
14 the facts are largely not in dispute, the matter can quickly move toward a dispositive motion.

15 Considered in this manner, this factor favors relief from stay.
16

17 **Factor 12: The impact of the stay and the balance of hurt**

18 Mr. Thompson and Ms. Nash will be prejudiced by delay in presenting this case if this Court
19 denies relief from the stay.

20 Mr. Thompson and Ms. Nash are regular folks who work for a living. The Property is where they
21 want to build a home. To say that the Property is a truly significant investment for them would be an
22 extreme understatement. They cannot use their property until the dispute is resolved. Their
23 investment would sit fallow for who-knows-how-long if they are required to wait out this massive
24 Chapter 11 case. Meanwhile, the stay does not affect PG&E in the least. PG&E goes on with
25 business as usual. (Declaration, ¶14.)

26 The San Francisco bankruptcy is a far, expensive venue for Mr. Thompson and Ms. Nash.
27

1 Unnecessarily litigating in San Francisco would significantly increase their costs for no benefit to
2 PG&E. The property, witnesses and property owners are all in Nevada County. (*Id.*, at 13-14.)

3 Lastly, rather than quickly resolving this matter in State Court by early settlement or dispositive
4 motion, Mr. Thompson and Ms. Nash are caught in a massive Chapter 11 with costs that could easily
5 spiral out of control. (*Id.*)

6 Likewise, the costs associated with a pencils-down freeze and a later revival at some indefinite
7 point in the future would undoubtedly result in increasing Mr. Thompson and Ms. Nash's litigation
8 and other costs. On the contrary, proceeding with the State Court action now, and opening the matter
9 to possible quick resolution, will not increase PG&E's costs -- litigation or otherwise.

10 The impact of the stay, without relief, significantly prejudices Mr. Thompson and Ms. Nash.

11 The balance of the hurt strongly favors Mr. Thompson and Ms. Nash's motion to lift the stay.

12
13 **IV. Conclusion**

14 If PG&E were bringing an adversarial action, abstention would be mandatory. The relevant
15 *Curtis* factors all point to relief from stay. The cost of litigating in the Bankruptcy court could be
16 crushing to Mr. Thompson and Ms. Nash, to no legitimate benefit for anyone.

17 Based on all of the foregoing, the Court should grant the Motion.

18
19 DATED: March 13, 2019

FRANK BLOKSBERG

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21
22 BY: /s/ Frank Bloksberg
23 Frank Bloksberg
24 Attorney for Kevin Thompson and Mia Nash
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26
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